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OFFICE OF PETITIONS

In re Application of :
Javier Marti Sendra et al. :
Application No. 10/524,273 : DECISION ON PETITION
Filed: August 11, 2005 : UNDER 37 C.F.R. §1.181
Attorney Docket No.: 027318- :
00007 :
Title: COUPLING SYSTEM BETWEEN :
DIELECTRIC OPTICAL GUIDES AND :
PLANAR PHOTONIC CRYSTAL GUIDES :

This is a decision on the petition filed March 21, 2007, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed August 11, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on November 12, 2006. A notice of abandonment was mailed on March 12, 2007.

With the present petition, Petitioner has asserted that the non-final Office action was not received.

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office

communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement¹.

Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that he has asserted that the Office communication was not received, that he has searched both the file jacket and the docket record, and he has included a copy of the latter.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the mailing was not received.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The Technology Center will be notified of this decision. The Technology Center's support staff will re-mail the non-final Office action of August 11, 2006, and will set a new period for response.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225². All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanoski
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United States Patent and Trademark Office

¹ See MPEP 711.03(c).

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).